

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA06-480

March 7, 2007

JOYCE MCCAIN HARMS
REVOCABLE TRUST
APPELLANT

AN APPEAL FROM POPE COUNTY
CIRCUIT COURT
[NO. CV2004-598]

v.

LAURA ROGERS, STEVE PALADINO,
HENRY PALADINO, STEVE HARMS,
AND SALLY HARMS
APPELLEES

HONORABLE KEN COKER,
CIRCUIT JUDGE

DISMISSED

The Pope County Circuit Court granted a petition by Laura Rogers, Steve Paladino, and Henry Paladino to establish a private road over two tracts of land, one owned by appellees Steve and Sally Harms and the other owned by appellant Joyce McCain Harms Revocable Trust. The court awarded Steve and Sally Harms compensation for their land and fencing expenses but made no such award to the Trust. The Trust now appeals and argues that it was entitled to compensation. The Rogers and Paladino parties cross-appeal and argue that the road's location was established contrary to law. We dismiss the appeal and cross-appeal for lack of a final order.

The petition to establish the private road was first filed in county court as mandated by Ark. Code Ann. §§ 27-66-401 to -404 (Repl. 1994). In accordance with those statutes, the county judge appointed three viewers, who determined that a private road was necessary and laid it out over land owned by Steve and Sally Harms and the Trust. The county judge adopted the viewers' findings, which included a general damage award of \$10,500 to the landowners.

An appeal was taken to circuit court, where, after a trial de novo, the judge entered an order adopting the course as described by the viewers, with a slight change that would allow the road to avoid crossing a creek. Damages of \$15,000 were awarded to Steve and Sally Harms. Thereafter, the Trust filed a Rule 60 motion to modify the court's order, asking, among other things, that it also receive an award of damages. The trial court refused, and this appeal and cross-appeal followed.

To be appealable, an order must be final. *Carquest of Hot Springs, Inc. v. Gen. Parts, Inc.*, 361 Ark. 25, 204 S.W.3d 53 (2005). A final order is one which dismisses the parties from the court's jurisdiction, discharges them from the action, and concludes their rights in the subject matter in controversy. *Villines v. Harris*, 362 Ark. 393, ___ S.W.3d ___ (2005). Where the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final. *Id.* The issue of finality is jurisdictional in nature and may be raised by this court of its own accord. *See Weire v. CNA Fin. Corp.*, 92 Ark. App. 353, ___ S.W.3d ___ (2005).

The circuit court's original order in the case at bar contains the following language:

That the Plaintiffs [Rogers and Paladino] shall obtain and pay for a survey to be completed of the viewers' proposed route as modified herein and a legal description of this modified route shall then be provided to the parties and the court within 45 days of this order. The parties will have ten days after receiving the survey to file with the Court any objections to the survey. After receiving this survey, if there are no objections to the same, the Court will then issue a further order setting out the legal description of the route of the Plaintiffs' private road provided in this order.

The court's order contemplates that several actions will take place after its entry: a survey will be taken reflecting the court's modification of the road description; the survey will be provided to the parties and the court within forty-five days; the parties will have ten days to file objections; and, if no objections are received, "the Court will then issue a further order setting out the legal description of the route"

Generally speaking, an order that contemplates further action by a party or the court is not a final, appealable order. *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002); see also *Petrus v. The Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997) (holding, in an adverse-possession case, that where a trial judge entered a decree that did not describe the property at issue but intended to resolve the boundary lines in a future survey, the decree was not final); *Penland v. Johnston*, ___ Ark. App. ___, ___ S.W.3d ___ (Nov. 8, 2006) (holding, in an adverse-possession case, that where the court's decree failed to identify the land awarded to the prevailing party, "leaving those [boundary] lines to a future survey may likely result in additional disputes," and the decree was not final). The order herein not only requires that a survey be taken but envisions possible objections by the parties and states that a subsequent order will be entered setting out the ultimate description of the road. We therefore conclude that it is not a final, appealable order.

Further, because the court's second order, entered following the Rule 60 motion, makes no mention of the survey and fails to provide the complete description promised in the earlier order, it too lacks finality. We therefore dismiss the appeal without prejudice.

Dismissed.

GLADWIN and ROBBINS, JJ., agree.